

SECOND REGULAR SESSION

HOUSE BILL NO. 1992

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PHILLIPS (Sponsor) AND ROWLAND (Co-sponsor).

6231L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof two new sections relating to chemical tests for blood alcohol content, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 577.023, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 577.018 and 577.023, to read as follows:

577.018. 1. A person commits the offense of refusing to submit to a chemical test if such person refuses to submit to a law enforcement officer's request for a chemical test made under section 577.020 or fails to take the action necessary to properly complete any requested chemical test.

2. The offense of refusing to submit to a chemical test is a class B misdemeanor; except that, if the person has been found guilty of:

(1) One intoxication-related traffic offense, it is a class A misdemeanor;

(2) Two intoxication-related traffic offenses, it is a class D felony;

(3) Three intoxication-related offenses, it is a class C felony; or

(4) Four intoxication-related offenses, it is a class B felony.

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "aggravated offender" is a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related traffic offenses; or

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

8 section 565.021, where the underlying felony is an intoxication-related traffic offense; [or]
9 assault in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault
10 of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of
11 section 565.082;

12 (2) A "chronic offender" is:

13 (a) A person who has pleaded guilty to or has been found guilty of four or more
14 intoxication-related traffic offenses; or

15 (b) A person who has pleaded guilty to or has been found guilty of, on two or more
16 separate occasions, any combination of the following: involuntary manslaughter under
17 subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under
18 section 565.021, where the underlying felony is an intoxication-related traffic offense; assault
19 in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
20 enforcement officer in the second degree under subdivision (4) of subsection 1 of section
21 565.082; or

22 (c) A person who has pleaded guilty to or has been found guilty of two or more
23 intoxication-related traffic offenses and, in addition, any of the following: involuntary
24 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the
25 second degree under section 565.021, where the underlying felony is an intoxication-related
26 traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section
27 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of
28 subsection 1 of section 565.082;

29 (3) "Continuous alcohol monitoring", automatically testing breath, blood, or transdermal
30 alcohol concentration levels and tampering attempts at least once every hour, regardless of the
31 location of the person who is being monitored, and regularly transmitting the data. Continuous
32 alcohol monitoring shall be considered an electronic monitoring service under subsection 3 of
33 section 217.690;

34 (4) An "intoxication-related traffic offense" is driving while intoxicated, driving with
35 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of
36 subsection 1 of section 565.024, murder in the second degree under section 565.021, where the
37 underlying felony is an intoxication-related traffic offense, assault in the second degree pursuant
38 to subdivision (4) of subsection 1 of section 565.060, assault of a law enforcement officer in the
39 second degree pursuant to subdivision (4) of subsection 1 of section 565.082, [or] driving under
40 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, **or**
41 **refusing to submit to a chemical test under section 577.018;**

42 (5) A "persistent offender" is one of the following:

43 (a) A person who has pleaded guilty to or has been found guilty of two or more
44 intoxication-related traffic offenses;

45 (b) A person who has pleaded guilty to or has been found guilty of involuntary
46 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, assault in the
47 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, assault of a law
48 enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section
49 565.082; and

50 (6) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
51 one intoxication-related traffic offense, where such prior offense occurred within five years of
52 the occurrence of the intoxication-related traffic offense for which the person is charged.

53 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
54 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
55 misdemeanor.

56 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010
57 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D
58 felony.

59 4. Any person who pleads guilty to or is found guilty of a violation of section 577.010
60 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a
61 class C felony.

62 5. Any person who pleads guilty to or is found guilty of a violation of section 577.010
63 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class
64 B felony.

65 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
66 prior offender, persistent offender, aggravated offender, or chronic offender under this section
67 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011 to the
68 contrary notwithstanding.

69 (1) No prior offender shall be eligible for parole or probation until he or she has served
70 a minimum of ten days imprisonment:

71 (a) Unless as a condition of such parole or probation such person performs at least thirty
72 days involving at least two hundred forty hours of community service under the supervision of
73 the court in those jurisdictions which have a recognized program for community service; or

74 (b) The offender participates in and successfully completes a program established
75 pursuant to section 478.007 or other court-ordered treatment program, if available.

76 (2) No persistent offender shall be eligible for parole or probation until he or she has
77 served a minimum of thirty days imprisonment:

78 (a) Unless as a condition of such parole or probation such person performs at least sixty
79 days involving at least four hundred eighty hours of community service under the supervision
80 of the court; or

81 (b) The offender participates in and successfully completes a program established
82 pursuant to section 478.007 or other court-ordered treatment program, if available.

83 (3) No aggravated offender shall be eligible for parole or probation until he or she has
84 served a minimum of sixty days imprisonment.

85 (4) No chronic offender shall be eligible for parole or probation until he or she has
86 served a minimum of two years imprisonment. In addition to any other terms or conditions of
87 probation, the court shall consider, as a condition of probation for any person who pleads guilty
88 to or is found guilty of an intoxication-related traffic offense, requiring the offender to abstain
89 from consuming or using alcohol or any products containing alcohol as demonstrated by
90 continuous alcohol monitoring or by verifiable breath alcohol testing performed a minimum of
91 four times per day as scheduled by the court for such duration as determined by the court, but not
92 less than ninety days. The court may, in addition to imposing any other fine, costs, or
93 assessments provided by law, require the offender to bear any costs associated with continuous
94 alcohol monitoring or verifiable breath alcohol testing.

95 7. The state, county, or municipal court shall find the defendant to be a prior offender,
96 persistent offender, aggravated offender, or chronic offender if:

97 (1) The indictment or information, original or amended, or the information in lieu of an
98 indictment pleads all essential facts warranting a finding that the defendant is a prior offender
99 or persistent offender; and

100 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
101 beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated
102 offender, or chronic offender; and

103 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
104 by the court that the defendant is a prior offender, persistent offender, aggravated offender, or
105 chronic offender.

106 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to
107 the jury outside of its hearing.

108 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
109 findings of such facts to a later time, but prior to sentencing.

110 10. The defendant shall be accorded full rights of confrontation and cross-examination,
111 with the opportunity to present evidence, at such hearings.

112 11. The defendant may waive proof of the facts alleged.

113 12. Nothing in this section shall prevent the use of presentence investigations or
114 commitments.

115 13. At the sentencing hearing both the state, county, or municipality and the defendant
116 shall be permitted to present additional information bearing on the issue of sentence.

117 14. The pleas or findings of guilt shall be prior to the date of commission of the present
118 offense.

119 15. The court shall not instruct the jury as to the range of punishment or allow the jury,
120 upon a finding of guilt, to assess and declare the punishment as part of its verdict in cases of
121 prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

122 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
123 intoxication-related traffic offense shall be heard and determined by the trial court out of the
124 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
125 limited to evidence received by a search of the records of the Missouri uniform law enforcement
126 system, including criminal history records from the central repository or records from the driving
127 while intoxicated tracking system (DWITS) maintained by the Missouri state highway patrol, or
128 the certified driving record maintained by the Missouri department of revenue. After hearing the
129 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed
130 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,
131 probation or parole or any combination thereof in any intoxication-related traffic offense in a
132 state, county or municipal court or any combination thereof, shall be treated as a prior plea of
133 guilty or finding of guilt for purposes of this section.

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